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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,248	11/20/2003	Daniel John DiLorenzo	31685-704.502	1505

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EXAMINER

GETZOW, SCOTT M

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/718,248	<b>Applicant(s)</b> DILORENZO, DANIEL JOHN	
	<b>Examiner</b> Scott M. Getzow	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 121, 123-129, 133, 135-138, 150, 153-173, 175, 176, 178, 179, 181, 182 and 194-200 is/are allowed.
- 6) ☒ Claim(s) 201-211, 213-219, 222, 223, 224, 225, 227-230, 233, 234, 235, 237 is/are rejected.
- 7) ☒ Claim(s) 212, 220, 221, 226, 231, 232 and 236 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/19/06</u> | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 121,123-129,133,135-138,150,153-173,175,176,178,179,181,182 and 194-237.

*Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 218,219,222,223,225 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naritoku et al (6104956).

The method steps of the above claims are deemed to be obvious over the teachings of the '956 patent. Naritoku teaches stimulating the vagus nerve of a patient, as well as monitoring brain activity. Col. 24, lines 15+ teach that the EEG can be monitored post stimulation and that the initial stimulation parameters can be 'titrated' clinically to achieve a desired response in a patient. Thus, subsequent stimulation of the patient is taught in the Naritoku patent.

3. Claims 201-211,213-217,224,227-230,233-235,237 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorfmeister et al (5995868) in view of Naritoku et al.

Dorfmeister teaches monitoring EEG signal for information that is indicative or predictive of seizure onset, see abstract. Col. 6, lines 50+ of Dorfmeister also teach stimulation with medicaments or electrical signals to treat a seizure. To deliver a subsequent neural modulation signal to a patient, as taught by Naritoku, would have been obvious and desirable to do<sup>so</sup> with the device of Dorfmeister since such subsequent stimulation would increase the chances of seizure

disruption and cessation, and would allow for choosing the proper parameters for which to stimulate the patient.

*Allowable Subject Matter*

4. Claims 121,123-129,133,135-138,150,153-173,175,176,178,179,181,182,194-200 are allowed.
5. Claims 212,220,221,226,231,232,236 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

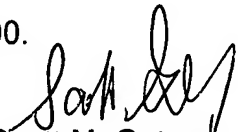
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Scott M. Getzow  
Primary Examiner  
Art Unit 3762

SMG